

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Illinois Power Company	:	
	:	99-0209
Proceeding pursuant to Section	:	
16-111(g) of the Public Utilities Act	:	
concerning proposed sale of fossil	:	
fuel fired generating plants.	:	

**ORDER**

July 8, 1999

## TABLE OF CONTENTS

I. PROCEDURAL HISTORY .....	1
II. LEGAL STANDARDS .....	2
III. ILLINOIS POWER’S NOTICE OF THE PROPOSED TRANSFER .....	5
IV. EVIDENCE PRESENTED CONCERNING THE PROPOSED ASSET TRANSFER...8	
A. Fossil Generation Asset Transfer and WESCO .....	8
1. IP’s Evidence .....	8
2. Staff’s Evidence .....	12
B. Whether the Fossil Generation Asset Transfer Will Render IP Unable to Provide Its Tariffed Services in a Safe and Reliable Manner .....	13
1. IP’s Evidence .....	13
2. Staff’s Evidence .....	18
C. Likelihood that Consummation of the Proposed Transaction Will Result in IP Being Entitled to Request an Increase in its Base Rates During the Mandatory Transition Period Pursuant to Section 16-111(d) of the Act .....	19
1. IP’s Evidence .....	19
2. Staff’s Evidence .....	21
V. COMMISSION’S CONCLUSION .....	22
VI. FINDINGS AND ORDERING PARAGRAPHS.....	23

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

<b>Illinois Commerce Commission</b>	:	
<b>On Its Own Motion</b>	:	
<b>-vs-</b>	:	
<b>Illinois Power Company</b>	:	
	:	<b>99-0209</b>
<b>Proceeding pursuant to Section</b>	:	
<b>16-111(g) of the Public Utilities Act</b>	:	
<b>concerning proposed sale of fossil</b>	:	
<b>fuel fired generating plants.</b>	:	

**ORDER**

By the Commission:

**I. PROCEDURAL HISTORY**

On April 16, 1999, Illinois Power Company ("Illinois Power", "IP", "Company" or "Respondent") filed a notice with the Commission, pursuant to Section 16-111(g) of the Public Utilities Act ("Act") (220 ILCS 5/16-111(g)), that Illinois Power is transferring its fossil generating assets to Illinova Corporation ("Illinova"). The notice further stated that Illinova will then transfer these assets to a wholly-owned subsidiary of Illinova, Illinova Power Marketing, Inc., which is referred to in IP's notice and hereinafter in this Order as "WESCO." The notice contained a listing of the specific assets which Illinois Power is transferring to Illinova. Included in the assets to be transferred are the following fossil fuel fired electric generating plants of IP:

- Baldwin Power Station
- Havana Power Station
- Hennepin Power Station
- Vermilion Power Station
- Wood River Power Station
- Oglesby Gas Turbine Plant
- Stallings Gas Turbine Plant
- Tilton Energy Center

The notice states that the transfer will occur either on September 1, 1999, which is the earliest date that the Power Purchase Agreement ("PPA") between WESCO and IP would go into effect, or the date that all necessary approvals have been obtained.

A report on Illinois Power's notice was prepared by the Staff of the Commission ("Staff") and has been made part of the record in this case. The Staff report, dated

April 20, 1999, states that the plants listed above comprise approximately 80% of the net dependable generating capacity of Respondent as of December 16, 1997, the effective date of P.A. 90-561, which added Article XVI to the Act.

On April 21, 1999, the Commission issued an order initiating a proceeding pursuant to Section 16-111(g)(vi) of the Act to determine whether IP's proposed sale of the electric generating plants listed in the notice should be approved or prohibited. Petitions to intervene were filed by Local 51 of the International Brotherhood of Electrical Workers ("IBEW") and by the Attorney General on behalf of the People of the State of Illinois ("People"). These petitions were granted by the Hearing Examiners. On May 3, 1999, pursuant to notice duly given in accordance with the provisions of the Act and the rules and regulations of the Commission, a prehearing conference in this docket was held before two duly authorized Hearing Examiners at the Commission's offices in Springfield. Appearances were entered on behalf of the Company, Staff, and IBEW. Thereafter, on May 21, 1999, a hearing was held for the presentation of evidence. The following witnesses testified on behalf of Illinois Power: Alec G. Dreyer, who is Senior Vice President of Illinova and Illinois Power, and President of Illinova Generating Company and of WESCO; Richard W. Eimer, Jr., who is Vice President of Illinois Power and of WESCO; Robert D. Reynolds, a Vice President of Illinois Power; and Robert A. Schultz, IP's Vice President-Finance. The following witnesses testified on behalf of Staff: William Riley, Chief of the Electric Section in the Engineering Department of the Energy Division; Karen A. Goldberger, a Senior Accountant in the Accounting Department of the Financial Analysis Division; and Edmund W. Bliler, a Financial Analyst in the Finance Department of the Financial Analysis Division. At the conclusion of the May 21, 1999 hearing, the record was marked "Heard and Taken." A proposed order was submitted by Illinois Power and concurred in by Staff, IBEW and the People.

On May 25, 1999, the Citizens Utility Board filed a petition for leave to intervene. This petition is hereby granted.

## **II. LEGAL STANDARDS**

Section 16-111(g) of the Act provides in pertinent part:

During the mandatory transition period, an electric utility may, without obtaining any approval of the Commission other than that provided for in this subsection and notwithstanding any other provision of this Act or any rule or regulation of the Commission that would require such approval: . . .

- (3) sell, assign, lease or otherwise transfer assets to an affiliated or unaffiliated entity and as part of such transaction enter into service agreements, power purchase agreements, or other agreements with the transferee;

provided, however, that the prices, terms and conditions of any power purchase agreement must be approved or allowed into effect by the Federal Energy Regulatory Commission; . . .

In order to . . . sell, assign, lease or otherwise transfer assets pursuant to this Section, the electric utility shall comply with subsections (c) and (d) of Section 16-128, if applicable, and provide the Commission with at least 30 days notice of the proposed reorganization or transaction, which notice shall include the following information:

(i) a complete statement of the entries that the electric utility will make on its books and records of account to implement the proposed reorganization or transaction together with a certification from an independent certified public accountant that such entries are in accord with generally accepted accounting principles and, if the Commission has previously approved guidelines for cost allocations between the utility and its affiliates, a certification from the chief accounting officer of the utility that such entries are in accord with those cost allocation guidelines;

(ii) a description of how the electric utility will use proceeds of any sale, assignment, lease or transfer to retire debt or otherwise reduce or recover the costs of services provided by such electric utility;

(iii) a list of all federal approvals or approvals required from departments and agencies of this State, other than the Commission, that the electric utility has or will obtain before implementing the reorganization or transaction;

(iv) an irrevocable commitment by the electric utility that it will not, as a result of the transaction, impose any stranded cost charges that it might otherwise be allowed to charge retail customers under federal law or increase the transition charges that it is otherwise entitled to collect under this Article XVI; and

(v) if the electric utility proposes to sell, assign, lease or otherwise transfer a generating plant that brings the amount of net dependable generating capacity transferred pursuant to this subsection to an amount greater than 15% of the electric utility's net dependable capacity as of the

effective date of this amendatory Act of 1997, and enters into a power purchase agreement with the entity to which such generating plant is sold, assigned, leased, or otherwise transferred, the electric utility also agrees, if its fuel adjustment clause has not already been eliminated, to eliminate its fuel adjustment clause in accordance with subsection (b) of Section 9-220 for a period of time equal to the length of any such power purchase agreement or successor agreement, or until January 1, 2005, whichever is longer . . .

(vi) In addition, if the electric utility proposes to sell, assign, or lease . . . an amount of generating plant that brings the net dependable generating capacity transferred pursuant to this subsection to an amount equal to or greater than 15% of its net dependable capacity on the effective date of this amendatory Act of 1997 . . . the electric utility shall provide, in addition to the information listed in subparagraphs (i) through (iv), the following information: (A) a description of how the electric utility will meet its service obligations under this Act in a safe and reliable manner and (B) the electric utility's projected earned rate of return on common equity, calculated in accordance with subsection (d) of this Section, for each year from the date of the notice through December 31, 2004 both with and without the proposed transaction. If the Commission has not yet issued an order initiating a hearing on the proposed transaction within 30 days after the date the electric utility's notice is filed, the transaction shall be deemed approved. The Commission may, after notice and hearing, prohibit the proposed transaction if it makes either or both of the following findings: (1) that the proposed transaction will render the electric utility unable to provide its tariffed services in a safe and reliable manner, or (2) that there is a strong likelihood that consummation of the proposed transaction will result in the electric utility being entitled to request an increase in its base rates during the mandatory transition period pursuant to subsection (d) of this Section. Any hearing initiated by the Commission into the proposed transaction shall be completed, and the Commission's final order approving or prohibiting the proposed transaction shall be entered, within 90 days after the date the electric utility's notice was filed.

### III. ILLINOIS POWER'S NOTICE OF THE PROPOSED TRANSFER

Illinois Power's notice contains detailed listings of the assets and related liabilities to be transferred to Illinova. The notice lists the following assets and related liabilities to be transferred:

1. All real and personal property owned by IP (including plant in service, plant held for future use, completed construction not classified and construction work in progress) at the sites commonly known as Baldwin Power Station, Havana Power Station, Hennepin Power Station, Vermilion Power Station, Wood River Power Station, Oglesby Gas Turbine Plant, Stallings Gas Turbine Plant, and Tilton Energy Center. The costs of these assets are recorded in Accounts 101, 105, 106, 107, 116 and 186 of the Uniform System of Accounts ("USOA") and the related accumulated provisions for depreciation and amortization are recorded in Accounts 108 and 111.
2. All real and personal property owned by IP at the Tilton combustion turbine ("CT") site as well as all leasehold interests and contract rights in connection with the Tilton site and the four CT units being installed at that site (except for transmission and gas supply assets remaining with IP). However, if IP completes a proposed off-balance sheet financing (sale/leaseback) for these assets prior to the date of transfer of assets to Illinova, then IP expects to transfer to Illinova all of IP's rights under the lease for the assets between IP and the unaffiliated special purpose entity which will be formed for purposes of owning these assets in connection with the sale/leaseback arrangements. This treatment would also apply to certain assets necessary to burn Powder River Basin coal at the Baldwin and Hennepin Stations and assets related to Selective Catalytic Reduction equipment at the Baldwin Station which would also be covered by the sale/leaseback transaction. These assets, for which IP has incurred expenditures, have been recorded in Accounts 106, 107 and 186.
3. General plant items located at the sites listed in paragraph 1 and certain other general plant assets associated with IP's fossil generation operations.
4. Intangible plant items located at the sites listed in paragraph 1 and certain other intangible plant assets associated with IP's fossil generation operations.
5. Certain other investments associated with IP's fossil generation operations, recorded in Account 124, consisting of land purchased for use of clay for a future ash pond.

6. Cash recorded in Account 131, consisting of the net amount of current receivables and payables transferred to Illinova (paragraphs 8 and 16 below) that are associated with the power plants listed in paragraph 1.
7. Working funds recorded in Account 135, consisting of petty cash funds maintained at the power plants listed in paragraph 1.
8. Accounts receivable recorded in Account 143, consisting of BTU penalties due from fuel suppliers (relating to Fuel Stock being transferred to Illinova, see paragraph 9 below), payments due from insurance companies in settlement of the 1996 fire at Wood River Power Station, and payments due as a result of energy swap transactions.
9. Fuel stock at the power stations listed in paragraph 1, recorded in Account 151.
10. Plant materials and operating supplies located at the power stations listed in paragraph 1, recorded in Account 154.
11. Sulfur dioxide emission allowance ("EA") inventory, recorded in Account 158.1.
12. An allocated portion of undistributed stores expense recorded in Account 163, associated with the plant materials and operating supplies being transferred to Illinova.
13. Prepayments for unamortized insurance premiums, relating to the assets being transferred, recorded in Account 165.
14. Miscellaneous deferred debits recorded in Account 186, consisting of prepayments to a coal supplier in respect of a coal supply contract which will be assigned to Illinova, fossil plant expenditures pending assignment of accounting distribution, fossil construction payments relating to the CT units discussed in paragraph 2, "in the money" value of energy trade contracts, and a premium to be received on emission allowance put options sold.
15. Accumulated deferred income taxes recorded in Account 190, for the FAS 109 effects of the Investment Tax Credits being transferred to Illinova.
16. Accounts payable recorded in Account 232, consisting principally of payments due to fuel suppliers and fuel transportation providers for fuel that has been delivered to the power stations listed in paragraph 1 and a buyout of a coal contract to enable plants to switch to low sulfur coal.



17. Real estate taxes accrued recorded in Account 236 with respect to the real estate being transferred at the power stations listed in paragraph 1.
18. Miscellaneous current and accrued liabilities recorded in Account 242 consisting of accrual for vacation pay due to IP employees who will become employees of WESCO.
19. Other deferred credits recorded in Account 253, consisting of a liability for energy owed in a power commodity swap and allowances owed in emission allowance swaps, and "out of the money" value of energy trade and emission allowance trade contracts.
20. Unamortized Investment Tax Credits recorded in Account 255, related to the plant assets being transferred to Illinova.

Schedules 1 through 11 included in the notice contain detailed listings of the above-described assets.

IP's notice also included the following information: (1) a statement that IP's fuel adjustment clause was eliminated, effective March 6, 1998, pursuant to Section 9-220(f) of the Act; (2) a statement of IP's projected earned rates of return on common equity ("ROEs"), calculated in accordance with Section 16-111(d), for the years 1999 through 2004, calculated both with and without the transfer of assets to Illinova; (3) accounting entries for the transfer of assets, and a statement from an independent certified public accountant that the accounting entries are in accordance with generally accepted accounting principles; (4) a statement from IP's chief accounting officer that the cost allocations associated with the transaction are in conformance with guidelines previously approved by the Commission; (5) a description of how the proceeds of the asset transfer will be used; (6) a list of all Federal and State approvals that IP has obtained or will obtain before implementing the transfer; (7) an irrevocable commitment that IP will not, as a result of the transfer, impose any additional transition charges or stranded cost charges beyond what is authorized under the Act; (8) the PPA between IP and WESCO; (9) an Interim Services and Facilities Agreement between IP and WESCO; (10) a demonstration that IP will meet its service obligations under the Act in a safe and reliable manner after the asset transfer, consisting of a paper entitled "Illinois Power Will Continue To Meet Its Service Obligations Under The Public Utilities Act In A Safe and Reliable Manner After The Transfer Of Its Fossil Generating Assets To WESCO"; and (11) a demonstration that there is not a strong likelihood that as a result of the transfer, IP will qualify to seek a rate increase during the mandatory transition period pursuant to Section 16-111(d) of the Act.

#### **IV. EVIDENCE PRESENTED CONCERNING THE PROPOSED ASSET TRANSFER**

##### **A. Fossil Generation Asset Transfer and WESCO**

##### **1. IP's Evidence**

Mr. Dreyer, Illinova's Senior Vice President and President of WESCO, described the proposed transaction and Illinova's corporate strategy. Mr. Dreyer testified that IP will transfer its non-nuclear generating assets to WESCO, a power supply company wholly owned by Illinova. He stated that the fossil generation assets will be sold by IP to Illinova, which will then make a capital contribution of the assets to WESCO. He stated that WESCO's primary responsibility at the outset will be to continue to meet the electric supply needs of IP's consumers, and that the PPA between WESCO and IP will ensure that those consumers see no reduction in service. Mr. Dreyer stated that the initial term of the PPA extends through the mandatory transition period, December 31, 2004 and contains provisions for annual renewal thereafter. (IP Ex. 1.1, p. 4)

Mr. Dreyer testified that IP will transfer assets used in power generation at all of its non-nuclear power stations. He explained that these assets include not only the fixed power generating facilities and fuel handling and waste disposal facilities, but also all other equipment and property used in the production of electricity. He stated that after the transfers, WESCO will own the physical assets IP currently uses in non-nuclear electric energy production. (IP Ex. 1.1, pp. 4-5)

Mr. Dreyer listed several factors that led IP to decide to transfer its non-nuclear generating facilities to an affiliate. He said that due to Federal Energy Regulatory Commission ("FERC") actions, the electric industry now functions in a competitive market. He noted that many states, including Illinois, have begun restructuring the industry, and that Illinois has passed the Electric Service Customer Choice and Rate Relief Law of 1997 ("Restructuring Law") to provide for transition to a competitive retail electric market in this State. Mr. Dreyer testified that there was concern that IP and Illinova would be unable to compete in a deregulated market without the transfer. He explained that establishing WESCO would allow Illinova to position itself in the evolving marketplace, while still maintaining the regulated structure of the delivery business in IP. Mr. Dreyer stated that the proposal is consistent with the changing industry and Illinois policy as reflected in the Restructuring Law. He added that WESCO will have corporate flexibility comparable to unregulated companies with which it will be competing. Mr. Dreyer also explained that Illinova's decision to exit the nuclear business by selling or shutting down its Clinton Power Station ("CPS") is related to the WESCO transaction. As the result of an SEC-approved quasi-reorganization in 1998, the values of IP's nuclear and non-nuclear generating assets were changed to market values, based on the expectation that competitively-based fair value will be realized. (IP Ex. 1.1 pp. 5-7)

Mr. Dreyer testified that IP considered alternatives to the WESCO transfer, such as the sale of the assets to an unaffiliated entity, but concluded transfer to WESCO to be the superior alternative. Therefore, IP did not seek other offers for the plant. Mr. Dreyer stated that IP's electric consumers will see no difference in either level or quality of service and no price increase. He stated that the transfer is structured to allow IP to meet its service obligations just as it does today. He stated that IP remains the entity required to meet those obligations, and that it will do so and continue to provide adequate, safe, and reliable service. (IP Ex. 1.1, pp. 8-9)

Mr. Dreyer described the financial transactions necessary to transfer the fossil assets to WESCO. IP will first sell its fossil assets to Illinova in exchange for an interest-bearing note in the form of IP Late-Filed Exhibit 1.7. Illinova will then make a capital contribution of the fossil assets to WESCO. The PPA between IP and WESCO will then go into effect. IP Exhibit 1.2 depicts the transactions. Mr. Dreyer stated that WESCO will refinance a portion of its assets as soon as possible after the transfer. He said that approximately \$800 million of debt is expected to be issued, and that WESCO will use the proceeds to buy back this amount of its equity from Illinova. Illinova will then use the proceeds to pay down \$800 million of the note it gave to IP as consideration for the fossil generating assets. IP Exhibit 1.3 illustrates the refinancing transactions. (IP Ex. 1.1, p. 9)

Mr. Dreyer testified that other regulatory approvals are required to implement this proposal. He stated that FERC will have to approve the PPA and the interconnection agreement between WESCO and IP, and that the accounting entries for the asset transfer will be filed with FERC. He explained that IP has included with its notice an Interim Services and Facilities Agreement between IP and WESCO, which will be used only until the proposed new Services and Facilities Agreement among and between the Illinova companies, filed with the Commission on February 26, 1999, in Docket 99-0114, goes into effect. He also stated that WESCO will be required to maintain its books in accordance with the FERC USOA. He said that the PPA will be filed with FERC approximately June 15, 1999, and the transfer is expected to be completed and WESCO to be fully operational by September 1999. Mr. Dreyer stated that in no event will the transactions be implemented before September 1, 1999. (IP Ex. 1.1, p. 10)

Mr. Dreyer explained how WESCO will be staffed and organized in order to meet its obligations to provide energy to IP on a reliable basis. All existing employees of IP's Wholesale Energy Business Group will become employees of WESCO, including personnel responsible for procurement of fuel and other products and services necessary in fossil operations; performance monitoring; fossil station engineering; fossil generation maintenance planning, scheduling and supervision; planning and implementation of fossil generation units capital improvement projects; and wholesale power marketing and trading activities. He stated that the associated collective bargaining agreements will be transferred as well. He stated that the current managers of each station will remain so under WESCO ownership. He testified that

approximately 550 IP employees involved in fossil generation operations will become WESCO employees. Mr. Dreyer concluded that immediately upon transfer, WESCO will commence operations with the same experienced management and work force that now operate IP's fossil units. (IP Ex. 1.1, pp. 10-12)

Mr. Dreyer also testified that all existing fuel inventories will be transferred to WESCO along with fuel supply and transportation contracts which will allow WESCO to commence operations with established fuel reserves and fuel supply sources. Mr. Dreyer also testified that all the necessary environmental permits and emission allowances ("EA's") will be transferred to WESCO. He stated that all other contracts, covering a wide range of products and services necessary to run the fossil generating units, will also be assigned to WESCO, so that it will have access to necessary materials, products and services when it commences operations. In addition, Mr. Dreyer testified that WESCO will have the financial capability to meet its commitments in the PPA and to continue to properly operate and maintain the generating units. He presented IP Exhibit 1.4, containing projected financial statements for WESCO for the years 2000-2004. He noted that the projected financial statements showed that WESCO would have assets of about \$2.7 billion, stockholders equity of about \$1.9 billion, and strong cash flow. Mr. Dreyer testified that Illinova's sources of income and cash to pay interest payments on the note to IP will include dividends on common stock paid to it by IP and WESCO, common equity repurchases by WESCO, and income tax savings due to the interest deductions on the note, all projected to be substantially in excess of the interest payments due on the note in each year of the forecast period. (IP Ex. 1.1, pp. 12-14)

Mr. Dreyer testified that WESCO plans to obtain administrative, overhead and support services from Illinova or Illinois Power. These services will include human resources, safety and health programs administration, financial planning and management, cash management and treasury, accounting, insurance and claims, internal auditing, legal services and public affairs, information technology services, and some procurement services (primarily relating to non-fuel operating materials and supplies). He noted that in the future, WESCO may develop internal capabilities to provide these services or obtain them from third party providers. He stated that Illinois Power and Illinova have a Services and Facilities Agreement in place approved by the Commission in Docket 94-0005. He testified that because that agreement does not cover provision of services from WESCO to IP, IP has requested approval of a new Services and Facilities Agreement between and among Illinova, Illinois Power and all other Illinova subsidiaries, which will be reciprocal. Mr. Dreyer testified that in the event the new agreement is not approved prior to the transfer of assets, IP has included an Interim Services and Facilities Agreement in its filing, which would apply between IP and WESCO and be terminated and superseded when the new agreement is approved. He stated that IP and WESCO will comply with all applicable requirements and restrictions on transactions between affiliates. (IP Ex. 1.1, pp. 14-16)

Mr. Dreyer testified that under the PPA, WESCO is obligated to make capacity and energy available to IP. He stated that the PPA is subject to FERC approval and states the terms under which WESCO will provide electricity to IP to serve IP's load. He testified that the PPA assures that IP will continue to be able to provide adequate and reliable generation service to tariffed service retail customers. Mr. Dreyer testified that IP's customers will not be adversely affected by the transfer of IP's fossil generation assets. Under the PPA, WESCO must post a security guarantee in favor of IP in the amount of \$25,000,000 to ensure the timely performance of WESCO's obligations to deliver capacity and energy to IP. He explained that WESCO's security guarantee may be provided through a corporate guarantee by Illinova, unless the credit ratings of Illinova's senior debt by Moody's and Standard & Poor's fall below investment grade, in which case WESCO must provide the guarantee within 15 days. Mr. Dreyer explained that the security guarantee would be available as a source of reimbursement to IP if, for example, WESCO fails to deliver the required amount of energy for a period of time and IP were required to obtain replacement energy on the market at higher prices than provided under the PPA. (IP Ex. 1.1, pp. 16-17)

Mr. Dreyer testified that the PPA will ensure that IP will continue to meet its service obligations to customers. He noted that customers' base rates are frozen through the mandatory transition period ending December 31, 2004, and that there is not a strong likelihood that the transfer would result in the Company being entitled to request a base rate increase under Section 16-111(d). He stated that because IP has eliminated its fuel adjustment clause, IP's tariffed service retail customers are insulated from any price risk related to the transfer. Mr. Dreyer concluded that the transfer meets the standards of Section 16-111(g) of the Act. (IP Ex. 1.1, pp. 17-18)

In response to concerns raised at the hearing, Mr. Dreyer testified that all non-supervisory employees of the Wholesale Energy Business Group will be transferred to WESCO with the same compensation and benefits that they currently have with IP, and that these same wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue for at least 30 months after the date of the transfer. He also noted that if the parties mutually agree to different terms and conditions of employment during the 30-month period, such agreement would be provided to the Commission at the time the agreement is changed. He stated that the agreement between IP and WESCO will cover the transfer of non-supervisory employees from IP to WESCO. (Tr. 23-25, 46-47)

IP also submitted Late-Filed IP Exhibit 1.8 which is the asset transfer agreement between IP and Illinova. The asset transfer agreement is a bill of sale listing the assets which are being transferred from IP to Illinova, and ultimately to WESCO. The asset transfer agreement also states the buyer's obligation that WESCO will extend offers of employment to all of the non-supervisory employees of IP's Wholesale Energy Business Group at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of the fossil asset transfer. It further provides that such wage rates and substantially

equivalent fringe benefits and terms and conditions of employment shall continue in effect for at least 30 months from the date of transfer unless IP and the collective bargaining units mutually agree to different terms and conditions of employment within that 30-month period.

## **2. Staff's Evidence**

Ms. Goldberger testified that IP complied with Section 16-111(g)(4)(i),(ii), (iii), and (iv) of the Act in its notice of the fossil asset transfer by including: the required statement of accounting entries; the certificate from an independent CPA stating the entries are in accordance with generally accepted accounting principles; certification from the Company's chief accounting officer that the accounting entries are in accord with any cost allocation guidelines previously approved by the Commission; description of how the Company will use the proceeds to reduce debt or recover the cost of services; list of all other State and federal approvals IP has obtained or will obtain; and an irrevocable commitment that the sale will not increase transition charges IP might otherwise be allowed to recover under Article XVI of the Act or impose any stranded costs that it might otherwise be allowed to charge its retail customers under federal law. (Staff Ex. 2R, pp. 3-5)

Ms. Goldberger testified that IP should file its required journal entries recording the sale with the Commission within six months following the transfer, in accordance with the instructions for Account 102 of the Uniform System of Accounts, 83 Ill. Adm. Code 415. She also requested that the entries be provided to the Commission's Director of Accounting. She noted that the journal entries provided by the Company in its filing are illustrative entries which present the accounts in which the sale will be recorded and the description, but not the dollar amounts. (Staff Ex. 2R, pp. 5-6) (IP Ex. 1.6, pp. 1-2) Ms. Goldberger testified that IP's commitment to file its final journal entries for the asset transfer with the Commission and the Director of Accounting no later than 45 days after the transfer (IP Ex. 1.6, pp. 1-2) satisfied her request. (Tr. 103)

Ms. Goldberger also testified that Section 16-111(g) states the utility must comply with Section 16-128(c) and /or (d), if applicable, and that subsection (c) applies to this transaction. She noted that Mr. Dreyer's testimony partially complied with Section 16-128(c), in that he stated that management and union employees at each of the power stations, as well as certain other IP employees at other Company locations, will become employees of WESCO, and that associated collective bargaining agreements will be assumed by WESCO. She noted, however, that there is no statement that the acquiring entity will continue to employ the non-supervisory personnel for 30 months after the transfer of the assets at no less than the wage rates, and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer of ownership. She recommended that IP provide these additional assurances for the record, which it did. (Staff Ex. 2R, pp. 6-8)

**B. Whether the Fossil Generation Asset Transfer Will Render IP Unable to Provide Its Tariffed Services in a Safe and Reliable Manner**

**1. IP's Evidence**

Mr. Eimer, Vice President of IP and WESCO, and Mr. Reynolds, Vice President of IP, testified as a panel and presented IP Exhibit 2.2, which is a copy of the PPA between Illinois Power and WESCO, and IP Exhibit 2.3, a copy of a document entitled "Illinois Power Will Continue to Meet its Service Obligations Under the Public Utilities Act in a Safe and Reliable Manner After the Transfer of its Fossil Generation Assets to WESCO," which was included in IP's April 16, 1999 notice. They stated that they anticipated that WESCO will file the PPA with FERC on or before June 15, 1999, with a requested effective date no earlier than September 1. They stated that the transfer of the fossil generation assets to Illinova will not occur prior to the effective date of the PPA authorized by FERC. (IP Ex. 2.1, pp. 1-4)

Mr. Eimer and Mr. Reynolds testified that under Section 16-103(a) of the Act, IP must continue to offer to the retail customers in its service area those tariffed services which IP was offering on December 16, 1997, until a service is declared "competitive" by the Commission. They testified that these services consist primarily of the traditional fully-bundled electric service offerings IP provides under Service Classifications on file with the Commission. Mr. Eimer and Mr. Reynolds also testified that under Section 16-103(c), IP must continue to offer bundled tariffed service to residential and small commercial customers on a permanent basis, and must allow residential and small commercial customers who have chosen to switch to an alternative power supplier to come back to IP's bundled tariffed service offerings. They noted that the Act also requires IP to offer several new tariffed services, such as delivery services on a tariffed basis to eligible customers according to the transition schedule specified in Section 16-104, and real-time pricing services on a tariffed basis to non-residential customers starting October 1, 1998 and to residential customers starting October 1, 2000. They also noted that the Act requires IP to offer to sell to non-residential delivery services customers their power and energy requirements at "market price," until at least the end of the period in which transition charges are paid. They stated that the Act generally requires IP to provide services and facilities that are adequate, reliable and safe. Mr. Eimer and Mr. Reynolds stated that this implies that IP must have sufficient generation resources to support the reliable operation of its transmission and distribution systems, and that IP must maintain adequate financial strength to carry out those responsibilities. (IP Ex. 2.1 pp. 4-6)

Mr. Eimer and Mr. Reynolds testified that in order to analyze IP's ability to provide power to retail customers after the transfer, they prepared a forecast of IP's peak demand and annual energy requirements for the years 1999-2004 using a base set of assumptions as to the amount of retail load that will switch to alternative power suppliers during this period. They also prepared alternative forecasts, one which assumed that all customers eligible for customer choice elect to remain tariffed service

customers of IP ("Total Retention Forecast") and the other assuming a higher percentage of retail customers switch to alternative suppliers than in the Base Forecast ("Lowest Expected Retention Forecast"). They then compared those load requirements plus reserve requirements to the generation resources that will be available to IP under the PPA and from other sources. Their analysis assumed that the Clinton Power Station ("CPS") is unavailable throughout the entire period, and therefore did not depend on any capacity and energy from CPS. Mr. Eimer and Mr. Reynolds testified that under the Base Forecast, 39 MW of reserve purchases would be required in 2000 in order to maintain 15% reserve margin above projected peak demand. No reserve purchases or other new resources would be required in any of the years 2001-2004. Under the Lowest Expected Retention Forecast, IP's reserve margin would exceed 15% in every year 2000-2004, and no reserve purchases or additional resources would be required. Under the Total Retention Forecast IP's reserve margin would be below 15% in each year 2000 through 2004, although available resources would exceed projected peak demand in every year. They testified, however, that the Total Retention Forecast is an extreme scenario that is highly unlikely to occur. They pointed out that IP Exhibit 2.3 contains an analysis of the additional resource options with short lead times that would be available in the unlikely event that significantly fewer customers switch to alternative power suppliers than is assumed in the Base Forecast. They stated they did not discuss IP's load and capacity situation in 1999 because the PPA will be effective September 1, 1999 at the earliest, so that the proposed transfer will not occur until after the summer 1999 peak season. (IP Ex. 2.1, pp. 6-8)

Mr. Eimer and Mr. Reynolds noted that Section III of IP Exhibit 2.3 lists key provisions of the PPA regarding IP's entitlement to capacity and energy from WESCO. They testified that under the PPA, IP is entitled to the rated net dependable capacities of the fossil generating units being transferred to Illinova, referred to in the PPA as "Tier 1 Capacity." The units being transferred and their net dependable capacities by month are shown on Appendix 1 to the PPA. The total Tier 1 Capacity in the month of July, which is assumed to be the month of system peak, is 3,812 MW. They testified that WESCO's planned outage schedules for the fossil generating units are subject to IP's review and comment, and that IP has the right to require WESCO to postpone or reschedule a planned outage if IP requires that the particular unit remain in service in order to maintain the reliability of IP's transmission and distribution system. They also pointed out that WESCO cannot sell, lease, transfer or assign a generating unit to a third party unless WESCO has acquired additional capacity, from a source satisfactory to IP, for the remainder of the period through December 31, 2004, in amounts at least as great as the net dependable capacity of the unit to be sold, assigned or transferred. Mr. Eimer and Mr. Reynolds testified that IP is also entitled under the PPA to "Tier 1 Energy" on a monthly basis in the amounts shown on Appendix 2 to the PPA. They stated that the Tier 1 Energy amounts for each month were developed by taking the average of the actual net energy delivered by the fossil generating units for that month in the 36-month period ending September 30, 1998, and that these values thus incorporate the historical impact of planned and unplanned outages. (IP Ex. 2.1, pp. 8-10)



Mr. Eimer and Mr. Reynolds testified that under the PPA, IP can obtain additional capacity and energy from WESCO. IP and WESCO will be able to enter into agreements by which WESCO will supply additional capacity or energy (referred to as "Negotiated Tier 2" capacity and energy) to IP for specified time periods. IP may also take more energy during an hour or a month than the sum of the monthly Tier 1 Energy and Negotiated Tier 2 Energy ("Supplemental Tier 2 Energy"), which is priced on an agreed basis or, if there is no agreement, on the basis of WESCO's hourly purchase and sale transactions or the incremental cost of WESCO's generating units or purchases. They further stated that the PPA imposes no limits on IP's ability to procure capacity and energy from sources other than WESCO. Mr. Eimer and Mr. Reynolds explained that if WESCO's available capacity is deficient, WESCO must immediately designate sufficient additional capacity resources to eliminate the deficiency, and that if it fails to do so, IP may take all reasonable actions to maintain the balance of electric supply and load on its system, including obtaining replacement capacity and energy from third parties. (IP Ex. 2.1, pp. 10-11)

Mr. Eimer and Mr. Reynolds testified that sufficient generation must be operating within a control area in order to maintain the reliability of the transmission and distribution system, for instance, in order to provide voltage support needed for electricity to flow across the system and avoid overloading certain transmission facilities. They noted that the PPA provides IP with access to generation resources necessary to maintain the system. They pointed out that the PPA entitles IP to the net dependable capacities of the fossil generating units and Tier 1 Energy equal to recent historical production of those units; that the fossil units listed in Appendix 1 to the PPA will be dispatched by IP, enabling dispatchers to take into account the need to keep particular units operating for transmission reliability purposes; and that IP is entitled to dispatch the units out of order or direct a delay of planned outages, if necessary to fulfill tariff or other requirements and ensure reliability. Mr. Eimer and Mr. Reynolds concluded that under the PPA, IP is entitled to capacity and energy in amounts sufficient to enable IP to meet its total retail peak load and energy requirements under reasonable projections of its tariffed service retail load from 2000 through 2004, and that IP will enjoy sufficient rights to control the individual generating units to enable it to maintain reliability. (IP Ex. 2.1, pp. 11-13)

Mr. Eimer and Mr. Reynolds also testified regarding WESCO's ability to perform its obligations under the PPA. They pointed out that the existing fuel inventories at each fossil power station are included in the assets being transferred to Illinova and then to WESCO. Existing fuel supply contracts, which include a base level of medium and long-term fossil fuel contracts supplemented by market purchases to provide sufficient fuel for operation of the fossil generating units, will be assigned to WESCO. Mr. Eimer and Mr. Reynolds concluded that these inventories and contracts will insure sufficient and secure fuel supplies to support WESCO's operations at the outset. They further testified that WESCO will have the capability to procure future fuel supplies because the IP personnel who procure fossil fuel will become employees of WESCO.

They also stated that WESCO will have available the same arrangements for purchase and transport of natural gas as are used by IP today. Mr. Eimer and Mr. Reynolds noted that WESCO will have sufficient EA's to operate the fossil generating units, as IP's entire inventory of EA's will be included in the assets transferred to WESCO. They pointed out that EPA issues EA's on a generating unit-specific basis, and will continue to issue EA's with respect to those units after WESCO is formed, allocating the EA's to WESCO, not to IP. WESCO will also be able to purchase additional EA's.

Mr. Eimer and Mr. Reynolds testified that WESCO will be able to procure materials and supplies to operate and maintain the fossil generating units as well as other products and services needed for purposes such as maintenance services during outages and engineering and construction services for rehabilitation or capital improvement projects on the units. They noted that the entire inventory of operating materials and supplies at each fossil generating station will be included in the assets transferred to WESCO, and that WESCO will procure additional materials and supplies using IP procurement personnel under the Interim Services and Facilities Agreement between IP and WESCO, and later under the final Services and Facilities Agreement when approved by the Commission in Docket 99-0114. They added that WESCO may develop in-house capabilities to perform these functions in the future. Mr. Eimer and Mr. Reynolds pointed out that the IP employees who currently do operation and maintenance will become WESCO employees and perform the same functions. They also noted that the PPA requires WESCO to maintain insurance in the amounts shown in Appendix 4 to the PPA, which are the same levels maintained by IP today. (IP Ex. 2.1, pp. 13-17)

Mr. Eimer and Mr. Reynolds also presented as supplemental direct testimony, IP Exhibit 2.7, which is a copy of IP's response to ICC Staff Date Request ENG 1.1. (IP Ex. 2.6, pp. 1-2) In that exhibit, IP explains how it will ensure sufficient generation within the IP control area to provide voltage support to allow electricity to flow across the IP system, to avoid overloading certain transmission facilities and to ensure sufficient transmission import capability in the IP control area, if IP or WESCO cancel the PPA after the initial term expires on December 31, 2004. The exhibit notes that IP would retain substantial statutory and legal obligations to provide certain bundled tariffed services and delivery services, to provide transmission services in accordance with FERC requirements, and to maintain adequate voltage support and import capability in its control area. The exhibit notes the following factors impact IP's ability to meet these obligations after 2004 if the PPA is canceled. First, the primary term of the PPA running through December 31, 2004, is intended to, among other things, give IP sufficient time to plan, and potentially acquire or arrange for additional generation resources or make other system modifications, for meeting its delivery services obligations after 2004. During this period the Midwest generation market is expected to become competitive in response to retail direct access, thereby giving IP access to more sources of generating capacity to support its transmission system. Further, there is a strong possibility that by 2005, there will be in place an Independent System Operator ("ISO"), a Regional Transmission Organization, or a TRANSCO with

independent responsibility for operating and maintaining the regional transmission system, including arranging for adequate generation support. (IP Ex. 2.7, pp. 1-2)

Second, generation operating in the IP control area will provide voltage support and transmission import capability to the IP transmission system, even if that generation is not operating directly to serve IP Load. The fact that the WESCO units continue to operate to supply WESCO's customers will provide voltage support and impact import capability to the IP control area. WESCO will have a continuing need to use the IP transmission system to reach its customers' loads, whether those loads are located within or outside of the IP control area, and will have a continuing business need and interest in the maintenance of full functionality of the IP transmission system. (IP Ex. 2.7, p. 2)

Third, if WESCO were to cancel the PPA in order to sell the output of the units to other customers, IP would still have other contractual arrangements with WESCO (e.g., interconnection agreements and transmission service agreements) which would provide for reliability support from the WESCO units. In accordance with IP's Open Access Transmission Tariff ("OATT"), WESCO generation would have an obligation to redispatch if such redispatch is necessary to maintain reliability of the transmission system; and would have an obligation to provide maintenance schedule information and VAR capability information. IP could also enter into contracts with other generators, or make transmission system modifications, to ensure reliability and adequate import capability. (IP Ex. 2.7, p. 2)

Fourth, with IP and WESCO both owned by the same corporate parent, which has an interest in ensuring that the needs and interests of both IP and WESCO are met, corporate oversight will ensure that actions are not taken by one party which leave the other party unable to meet its statutory obligations or business needs. Thus, for example, the timing of PPA cancellation could be coordinated with IP's readiness to obtain adequate generation from other sources, or to complete transmission system modifications, to meet its transmission system needs; or the PPA could be replaced with a contract that provides IP with access to reduced capacity from the WESCO units, but sufficient to provide voltage support and import capability. (IP Ex. 2.7, pp. 2-3)

Fifth, in addition to the existing WESCO units, significant amounts of new capacity are expected to be added in the Midwestern region by the end of 2004. IP identified some 6235 MW of new capacity that has been announced as planned or under construction in the MAIN region to be in service by 2004. Additional capacity not included in this total has been publicly announced. Some of this generation capacity is planned for installation within the IP control area, and would provide both voltage support to the IP transmission system and help to maintain or increase import capability into the IP system. New capacity installed elsewhere in the region will maintain or increase IP's import capability to the extent it reduces the need for imports into nearby control areas. (IP Ex. 2.7, p. 3)

Sixth, the required notice for cancellation of the PPA is 12 months prior to the end of the Primary Term or any Extended Term. As demonstrated by IP's experience with the Tilton CT units, this would be sufficient notice for IP to install CT capacity or other local generation (such as micro-turbines or other distributed generation) in particular areas of its control area that required additional voltage support or additional generating capability to strengthen import capability. In addition, within this time frame, IP may pursue other transmission system enhancements to address voltage level or import capability concerns. (IP Ex. 2.7, p. 3)

## **2. Staff's Evidence**

Mr. Riley testified concerning the evidence which IP submitted to establish that the proposed transaction will not render IP unable to provide its tariffed services in a safe and reliable manner. Mr. Riley testified that the transaction would not render IP unable to provide its tariffed services in a safe and reliable manner. He reviewed IP's testimony and the terms of the PPA and determined that the PPA will assure that IP will be able to provide safe and reliable service to IP's customers. Mr. Riley noted the following terms of the PPA as significant to IP's ability to provide safe and reliable service after transfer of the fossil units: IP is entitled to an amount of generating capacity from the fossil units equal to their monthly net dependable capacities; IP retains the right to purchase additional capacity from WESCO or any other third party provider; IP will dispatch WESCO's generating units; IP is entitled to call upon any operable WESCO fossil unit whenever IP deems it necessary to maintain transmission and distribution system integrity, or to fulfill other requirements; IP can veto any planned outage schedule developed by WESCO on the basis of transmission and distribution system reliability; and WESCO cannot sell or assign any of the units during the primary term of the PPA without contracting for replacement power and energy from a supplier acceptable to IP. (Staff Ex. 1, pp. 1-3)

Mr. Riley noted that IP Exhibit 2.3 provides an analysis of IP's peak load reserve margins, assuming the transfer of the generating units and various levels of customer retention. He noted that none of the forecasts included capacity from CPS. Mr. Riley noted that in the 100% retention scenario, IP's reserve margin is below the MAIN minimum of 15% in all years, and that in the base case, IP has a 12.3% reserve margin in 1999, which increases to 13.9% in 2000 and increases continually through 2004. He noted that in the lowest retention forecast, IP has a 12.3% reserve margin in 1999, which increases to 21% in 2000 and up to 53% in 2004. Mr. Riley observed that while under the base case, or most likely scenario, IP's reserve margins in 1999 and 2000 are less than the MAIN requirement, the 12.3% reserve margin for 1999, shown in all three scenarios, reflects IP ownership of all fossil units, and the transfer will not take place until after the 1999 peak season. He also observed that since the PPA provides IP with the same aggregate generating capacity from the fossil units that IP has currently, the reserve margins reflected in IP Exhibit 2.3 would be no different if the transfer did not occur. (Staff Ex. 1, pp. 3-4)

As for the period after cancellation of the PPA, Mr. Riley stated that IP's testimony indicates that IP will still be able to provide safe and reliable service. Mr. Riley noted that in IP Exhibits 2.6 and 2.7, IP explained how various regulatory and contractual requirements will ensure continued reliability upon cancellation of the PPA. Mr. Riley highlighted the following points: the primary term of the PPA runs through 2004, which will give IP adequate time to make system improvements or arrange for additional generation; by 2005, there may be an ISO or transmission company that will have responsibility for operating and maintaining the regional transmission system; WESCO, IP, or other generation operating in the IP control area will provide voltage support and import capability even if that generation is not operating directly to serve IP load; IP will have other contractual arrangements with WESCO, such as interconnection and transmission service agreements; WESCO would have an obligation under IP's OATT to redispatch its generation if necessary; and significant new generating capacity is planned and under construction in Illinois, some of which is in IP's control area. Mr. Riley testified that if an ISO is not in place by the time the PPA is canceled, he does not believe IP's reliability will suffer, but that IP would be responsible, as it is now, for assuring safe operation and transmission within its control area. (Staff Ex. 1, pp. 4-5)

Mr. Riley testified that during the term of the PPA, the operation of the fossil units will not differ significantly from how they would have operated if owned by IP, and after the term of the PPA, contractual and regulatory constraints will maintain reliability. WESCO will depend on IP's transmission system to deliver its power, and it will therefore not be in WESCO's interest to jeopardize the reliability and operation of IP's transmission system. (Staff Ex. 1, pp. 5-6)

**C. Likelihood that Consummation of the Proposed Transaction Will Result in IP Being Entitled to Request an Increase in its Base Rates During the Mandatory Transition Period Pursuant to Section 16-111(d) of the Act**

**1. IP's Evidence**

Mr. Schultz, IP's Vice President - Finance, presented IP Exhibit 3.2, Rate of Return on Common Equity Projections, with IP's projected ROEs for 1999-2004, calculated in accordance with Section 16-111(d) of the Act, with and without the transfer. Mr. Schultz explained that the "with asset transfer" scenario contemplates that IP sells its fossil generating assets to Illinova in exchange for an interest-bearing note, and Illinova in turn makes a capital contribution of the transferred assets to WESCO, IP and WESCO enter into a PPA pursuant to which WESCO supplies electric power and energy to IP, and WESCO assumes responsibility for all operating activities associated with the fossil generating assets. He explained the development of the projections of market prices of power and energy used in the projections. Mr. Schultz also testified that because under the PPA, IP's power supply expense and WESCO's revenues will be sensitive to differences in market prices of power and energy, financial projections

were also prepared using alternative assumptions, a “high” market price scenario and a “low” price scenario, which he presented in IP Exhibit 3.5. He presented projections of IP’s ROE for the years 1999-2004, using the high and low market price values, in IP Exhibit 3.6. (IP Ex. 3.1, pp. 4-8)

Mr. Schultz noted that IP did not prepare alternative financial projections under varying assumptions regarding the amount of retail load IP may lose to alternative generation services suppliers, because the projected financial results are not thought to be sensitive to variations in the amount of retail load remaining with IP. He explained that IP will receive transition charge revenues from any customer that switches to an alternative supplier during the period covered by the financial projections. He also stated that under the PPA, IP may release capacity, reducing the amount of capacity for which it must pay WESCO, which it may do if the retail load loss is greater than anticipated. (IP Ex. 3.1, pp. 8-9)

Mr. Schultz stated that under Section 16-111(d), the test for determining if an electric utility is eligible to request an increase in its base rates requires that the utility’s ROE be below the two-year average for the same two years of the monthly average yields of 30-year U.S. Treasury bonds. He testified that this average for the two-year period ending December 31, 1998 was 6.09%, and that in preparing the financial projections, yields were assumed to remain at this level throughout the forecast period. Mr. Schultz concluded from the comparison of the projected ROEs and the Treasury bond yields, that unless the yields on 30-year Treasury Bonds increase dramatically from recent historical levels, IP’s ROEs after the transfer of the fossil generation assets and the commencement of operations under the PPA with WESCO will be well above the levels that would allow IP to request a base rate increase during the mandatory transition period. He stated that this conclusion applied under high market price and low market price scenarios as well as under the base case. Mr. Schultz concluded that there is not a strong likelihood that IP will be entitled to request an increase in its base rates as a result of the transfer, and that it is in fact extremely unlikely that IP will be entitled to do so during the mandatory transition period. (IP Ex. 3.1, pp. 9-10)

Mr. Schultz presented IP Exhibits 3.3 and 3.4 containing five-year financial projections with and without the transfer, respectively. He also presented IP Exhibit 3.8, which showed key financial indicators under the two scenarios. Mr. Schultz concluded from the financial projections that IP’s financial condition will be better if the fossil generation assets are transferred to Illinova than if they are not. He stated that IP’s capital structure will be strengthened, meaning debt as a percentage of total capital will be lower, and other cash-based financial indicators will be better, if the transfer is implemented than if not. Mr. Schultz added that IP’s financial condition will be significantly improved over 1998 actual results. He explained that IP will receive additional income through the interest that will be paid by Illinova on the note that is given to IP as consideration for the transfer. He added that IP’s depreciation, fuel, operation and maintenance and general tax expenses will be reduced overall as a result of the transfer and the movement of the related operating activities to WESCO,

and that IP will be able to retire a significant amount of debt and preferred stock using the proceeds of the transaction. Mr. Schultz also noted that IP's retail revenues remain the same in each scenario, even though expenses are lower overall in the "with asset transfer" scenario. (IP Ex. 3.1, pp. 12-13)

Mr. Schultz explained that peak demand and energy sales projections used in his financial projections are the same as those used in the "Base Forecast" for the reliability analysis presented by Mr. Eimer and Mr. Reynolds. He noted that for each year in the forecast period, IP's projected annual kWh sales, less energy available from CPS and from third-party sources, are less than the annual Tier 1 Energy entitlement under the PPA. He testified that the projections assume CPS returns to operation in May 1999, operates through August 1999, and then is permanently shut down, with decommissioning commencing immediately after shutdown, using the immediate dismantlement method. (IP Ex. 3.1, pp. 15-16)

Mr. Schultz testified that the interest rate and annual interest payments on the note payable from Illinova to Illinois Power were developed on the assumption that the note will have a ten-year maturity with a fixed interest rate based on the yield on the ten-year U.S. Treasury Bond plus 175 basis point, which is representative of recent spreads between yields on BBB-rated corporate debt and ten-year U.S. Treasury Bonds. Based on the yield on the ten-year U.S. Treasury Bond due May 2009 as of April 12, 1999 (5.24%), the interest rate on the note would be 7.0%. IP submitted a copy of the promissory note from Illinova to IP as Late-Filed IP Exhibit 1.7. Mr. Schultz stated that Illinova is projected to pay down the balance of the note by \$800 million at the closing of the fossil generation asset transfer, or shortly thereafter, using the proceeds of a refinancing of the WESCO assets. He stated that after this paydown, the unpaid principal balance will be \$1.9 billion, which is not repaid until the maturity of the note. He testified that the financial projections assume that with respect to the \$800 million payment IP will receive as the initial principal repayment on the note, a total of \$508 million will be used to repurchase or retire outstanding debt in the year 2000, an additional \$100 million is used to retire outstanding preferred stock in 2001, and the remaining \$192 million is used for internal financing purposes, avoiding the need for new external financing. Mr. Schultz noted that in the "no asset transfer" scenario, IP is assumed to issue an additional \$195 million of debt not required in the "with asset transfer" scenario. (IP Ex. 3.1, pp. 16-18)

## **2. Staff's Evidence**

Mr. Bliler testified that he evaluated IP's evidence regarding whether there is a strong likelihood that consummation of the proposed transaction will result in the Company being entitled to request an increase in its base rates during the mandatory transition period pursuant to Section 16-111(d) of the Act, and specifically to evaluate IP's projected ROEs. He testified that IP's projected ROEs were calculated in accordance with Section 16-111(d) for each year from the date of the notice through December 31, 2004, with and without the proposed transaction. Mr. Bliler testified that

IP's projected ROEs for this period do not fall below the projected U.S. Treasury bond yield average. He also compared IP's projected ROEs to the historical total return of long-term government bonds for the period from 1926 to 1997, which was 5.6%, and found that IP's projected ROEs for the transition period do not fall below this historical yield. He concluded there is not a strong likelihood that consummation of the proposed transaction will result in IP being entitled to request an increase in base rates under Section 16-111(d) during the mandatory transition period. (Staff Ex. 3, pp. 1-5)

## **V. COMMISSION'S CONCLUSION**

Based on its review of IP's April 16, 1999 notice and of the evidence submitted by the Company and Staff, the Commission concludes that the proposed transfer of IP's fossil generation assets to Illinova should be approved. IP's notice is in compliance with the requirements of Section 16-111(g). In addition, the evidence establishes that the proposed transaction will not render IP unable to provide its tariffed services in a safe and reliable manner. The evidence also establishes that there is not a strong likelihood that consummation of the proposed transaction will result in IP being entitled to request an increase in its base rates during the mandatory transition period, i.e., prior to January 1, 2005, pursuant to Subsection 16-111(d) of the Act. No party has presented any evidence or argument to the contrary, and no party opposes the proposed transfer.

The evidence, including the testimony of Mr. Dreyer and the asset transfer agreement submitted as Late-Filed IP Exhibit 1.8, establishes that IP will comply with Section 16-128(c) of the Act by requiring the buyer, as a term of the asset transfer agreement, to extend offers of employment to the non-supervisory employees of the fossil-fuel fired generating stations and the other employees of IP's Wholesale Energy Business Group at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of the fossil asset transfer, and that such wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue in effect for at least 30 months from the date of transfer unless an agreement is reached with the collective bargaining units to different terms and conditions of employment within that 30-month period. In accordance with the commitment made by Mr. Dreyer during the course of the hearings, if agreement is reached with the collective bargaining units to different terms and conditions of employment within the 30 month period, a copy of such agreement should be filed with the Commission.

IP should file with the Commission the final accounting entries for the transaction, showing the actual dollar values of the assets and liabilities transferred from IP to Illinova at the time of transfer, within 45 days after the date of the transfer, and should provide a copy of this filing with the Director of Accounting. In addition, the Commission concludes that the Interim Services and Facilities Agreement submitted as IP Exhibit 1.5 is only authorized for transactions between IP and WESCO and only until entry of a final order in Docket 99-0114 approving a permanent Services and Facilities



Agreement between and among IP, Illinova and other Illinova subsidiaries. Subsequent to that order, all transactions between IP and WESCO shall be conducted in accordance with the terms of the final Services and Facilities Agreement approved by the Commission in Docket 99-0114.

## **VI. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having reviewed Illinois Power Company's April 16, 1999, notice and the evidence of record and being fully apprised in the premises, is of the opinion and finds that:

- (1) Illinois Power Company is an Illinois corporation engaged in the production, transmission, sale and delivery of electricity to the public in the State of Illinois, and is a public utility as defined in Section 3-105 of the Public Utilities Act and an electric utility as defined in Section 16-102 of the Act;
- (2) the Commission has jurisdiction of Illinois Power and of the subject matter of this docket;
- (3) the statements of fact set forth in the prefatory portions of this Order are supported by the evidence of record and are hereby adopted as findings of fact;
- (4) Illinois Power's April 16, 1999 notice of the transfer of its fossil generating station assets to Illinova Corporation is in compliance with the requirements of Section 16-111(g) of the Act;
- (5) the proposed transaction will not render IP unable to provide its tariffed services in a safe and reliable manner;
- (6) there is not a strong likelihood that consummation of the proposed transaction will result in IP being entitled to request an increase in its base rates during the mandatory transition period pursuant to Subsection 16-111(d) of the Act;
- (7) Illinois Power will comply with the requirements of Section 16-128(c) of the Act, in that Illinois Power has provided assurances, and the "Asset Transfer Agreement," IP Exhibit 1.8, obligates the buyer, to extend offers of employment to the non-supervisory employees of the fossil generating stations and of the business unit being transferred at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of the transfer, and that such wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue in effect for at least 30

months from the date of transfer unless an agreement is reached with the collective bargaining units to different terms and conditions of employment within that 30-month period; if an agreement is reached with the collective bargaining units to different terms and conditions of employment within the 30 month period, a copy of such agreement should be filed with the Commission;

- (8) the transfer of Illinois Power's fossil generating station assets, as described in Section III of this Order and as listed in the section of Illinois Power's April 16, 1999, notice entitled "Assets & Liabilities Transferred", in return for a promissory note, in the form of IP Exhibit 1.7, in an amount equal to the net amount of the assets and liabilities transferred as recorded on Illinois Power's books and records on the date of the transfer, should be approved;
- (9) Illinois Power shall file with the Commission the final accounting entries for the transaction, showing the actual dollar values of the assets and liabilities transferred from Illinois Power to Illinova at the time of transfer, within 45 days after the date of the transfer, and should provide a copy of this filing to the Director of Accounting; and
- (10) the Interim Services and Facilities Agreement submitted as IP Exhibit 1.5 is only authorized for transactions between Illinois Power and Illinova Power Marketing, Inc. and only until entry of a final order in Docket 99-0114 approving a permanent Services and Facilities Agreement between and among Illinois Power, Illinova and other Illinova subsidiaries; subsequent to that order, all transactions between Illinois Power and Illinova Power Marketing, Inc., shall be conducted in accordance with the terms of the final Services and Facilities Agreement approved by the Commission in Docket 99-0114.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the transfer of Illinois Power Company's fossil generating station assets, as described in Section III of this Order and as listed in the section of Illinois Power's April 16, 1999, notice entitled "Assets & Liabilities Transferred", in return for a promissory note, in the form of IP Exhibit 1.7, in an amount equal to the net amount of the assets and liabilities transferred as recorded on Illinois Power's books and records on the date of the transfer, is approved.

IT IS FURTHER ORDERED that the asset transfer agreement between Illinois Power Company and Illinova Corporation shall comply with Finding (7) of this Order.

IT IS FURTHER ORDERED that if an agreement is reached with the collective bargaining units to different terms and conditions of employment within the 30-month period, a copy of such agreement should be filed with the Commission.

IT IS FURTHER ORDERED that Illinois Power Company shall comply with Findings (9) and (10) of this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.800, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 8th day of July, 1999.

Chairman